

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**DESIRAE BENEDICT AND ANTON
BENEDICT,**

Civil Action No. 21-cv-1300

Plaintiff,

-against-

COMPLAINT

UNITED STATES OF AMERICA

Defendants.

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Plaintiffs, **DESIRAE BENEDICT AND ANTON BENEDICT**, by their attorneys,
FIEDLER DEUTSCH, LLP as and for her Complaint against the Defendant allege, upon
information and belief, as follows:

I.

PARTIES, JURISDICTION, SERVICE OF PROCESS, AND VENUE

1. This is a medical malpractice case involving the severe and permanent injuries sustained by Plaintiff **DESIRAE BENEDICT**.
2. Plaintiff **DESIRAE BENEDICT** resides in Newburgh, New York Orange County.
3. The Defendant is the **UNITED STATES OF AMERICA**.
4. This Federal District Court has jurisdiction of this cause, because this action is brought pursuant to and in compliance with 28 U.S.C. §1346(b), and 28 U.S.C. §2671 - §2680 *et seq.*, commonly known as the “Federal Tort Claims Act,” which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.

5. The Defendant **UNITED STATES OF AMERICA** may be served with process in accordance with Rule 4(I) of the Federal Rules of Civil Procedure by serving a copy of the **Summons and Plaintiff's Complaint** on the United States Attorney for the Southern District of New York, by Certified Mail, Return Receipt Requested at his office, United States Attorney, Southern District of New York, One St. Andrews Place, New York, New York 10007, to the attention of the Civil Process Clerk, and by serving a copy of the **Summons and Plaintiff's Complaint** on the Attorney General of the United States, by certified mail, return receipt requested, at the Attorney General's Office, 10th and Constitution Avenue, N.W., Washington, DC 20530, to the attention of the Civil Process Clerk.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391(e), and 28 U.S.C. §1402(b) as the United States is a Defendant, a substantial part of the events or omissions giving rise to the claim occurred in this district, and Plaintiff resides in this district.

II.

LIABILITY OF THE UNITED STATES OF AMERICA

7. This case is commenced and prosecuted against the defendant **UNITED STATES OF AMERICA** pursuant to and in compliance with Title 28 U.S.C. §2671 - §2680, commonly referred to as the "Federal Tort Claims Act". Liability of the United States is predicated specifically on Title 28 U.S.C. §1346(b)(1) and Title 28 U.S.C. §2674 because the personal injuries, and resulting damages of which complaint is made, were proximately caused by the negligence, wrongful acts and/or omissions of "deemed" employees of the defendant **UNITED STATES OF AMERICA**, including the Department of the Health and Human Services at a deemed clinic pursuant to The Federally Supported Health Centers Assistance Act of 1992, Public Law No. 102-501, 42 U.S. C. 233 (g)(k), and the amended Federally Supported Health Centers Assistance Act of 1995, Public Law no. 104-73, 42 U.S. C. 201., by a Stanley Swaby,

M.D., who was a full time employee of Cornerstone Family Health Care located at 147 Lake Street, Newburgh, New York 12250, in Orange County while acting within the scope of his office or employment, under circumstances where the defendant **UNITED STATES OF AMERICA**, if a private person, would be liable to the plaintiff **DESIRAE BENEDICT** in the same manner and to the same extent as a private individual under the laws of the State of New York.

III.

JURISDICTIONAL PREREQUISITES

8. Plaintiffs plead pursuant to Title 28 U.S.C. §2672 and Title 28 U.S.C. §2675(a), that the claims set forth herein were filed with and presented administratively to the Defendant's agency, the Department of Health and Human Services, on or about July 25, 2020 for the claim of Plaintiffs **DESIRAE BENEDICT AND ANTON BENEDICT**. The Department of Health and Human Services acknowledged receipt of the claims on October 6, 2020. Greater than six (6) months has passed since the filing of these claims. Defendant, **UNITED STATES OF AMERICA** has failed to resolve these claims. Accordingly, Plaintiffs have complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation by filing suit within six (6) months of the claims denial.

IV.

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IS AN AGENCY OF THE UNITED STATES OF AMERICA

9. The Department of the Health and Human Services is an agency of the defendant **UNITED STATES OF AMERICA**. The **UNITED STATES OF AMERICA**, Defendant herein, through its agency, the Department of Health and Human Services, at all times material hereto, deemed the ownership, operation and control of the health care facility known as

Cornerstone Family Health Care located at 147 Lake Street, Newburgh, New York 12250 in Orange County and through its agency, the United States Department of Health and Human Services, and deemed the employees of said health clinic and staff of said health care facility to be its agents, servants, and/or employees. The clinic is physically located within the borders of New York.

V.

EMPLOYMENT AND COURSE AND SCOPE

10. At all times material hereto, all persons involved in the medical care provided to Plaintiff, **DESIRAE BENEDICT** at a medical facility known as Cornerstone Family Health Care, 147 Lake Street, Newburgh, New York in Orange County, including STANLEY SWABY, M.D. were deemed by agency regulations to be agents, servants, and/or employees of the Department of Health and Human Services ,an agency of the defendant **UNITED STATES OF AMERICA**, or some other agency thereof, and were at all times material hereto, acting within the course and scope of such employment.

VI.

CAUSE OF ACTION AGAINST THE UNITED STATES OF AMERICA

11. This is a Federal Tort Claims Action for monetary damages sustained by Plaintiffs, **DESIRAE BENEDICT** and **ANTON BENEDICT** resulting from personal injuries and damages to Plaintiff **DESIRAE BENEDICT**, and loss of services to Plaintiff, **ANTON BENEDICT**, including but not limited to failing to perform timely ultrasound.

12. Plaintiff, **DESIRAE BENEDICT**, was a patient of Stanley Swaby, M.D., an agent, servant and/or employee of Cornerstone Family Health Care when on May 13, 2020 Dr. Swaby failed to timely order and perform a pelvic ultrasound in light of a history of pregnancy

despite blocked tubes, this resulting in a ruptured ectopic pregnancy requiring surgery to remove the ruptured tube during which small bowel was perforated requiring another surgery.

13. Defendant, the **UNITED STATES OF AMERICA**, its agents, servants and/or employees was negligent in departing from good and accepted standards of medical practice in among other things, in ignoring, failing to appreciate the significance of and act upon the history elicited including the patient's surprise that she was pregnant because she had been told that her tubes were blocked; in failing to consider the possibility of an ectopic pregnancy; in failing to rule out an ectopic pregnancy; in failing to timely order and perform an ultrasound and in failing to avoid a ruptured ectopic pregnancy and its sequelae.

14. At all times mentioned herein, the employees, agents, and/or representatives of the defendant **UNITED STATES OF AMERICA**, its agents, servants and/or employees were negligent and causative of the injuries and damages sustained by plaintiffs, **DESIRAE BENEDICT and ANTON BENEDICT** without any negligence on the part of the plaintiff **DESIRAE BENEDICT** herein.

15. That the Defendant **UNITED STATES OF AMERICA** failed to use due, reasonable and proper care in treating the plaintiff **DESIRAE BENEDICT** and deviated from accepted standards of medical care and the Defendant **UNITED STATES OF AMERICA** failed to exercise the knowledge, skill and diligence, which as physicians, and allied health care providers they should have possessed and exercised on behalf of the Plaintiff, and were otherwise careless and negligent.

VIII.

DAMAGES

16. That solely as a result of the aforesaid injuries due to the improper care and treatment on the part of the Defendant **UNITED STATES OF AMERICA** its agents servants and/or employees, the plaintiff **DESIRAE BENEDICT** has been subjected to repeated medical therapy, examinations, tests, medications, surgeries, hospitalizations, and other care, and the plaintiff **DESIRAE BENEDICT** will continues to require such further treatment in the future and has been damaged in the amount of Three Million Dollars (\$3,000,000).

17. That the Plaintiff **DESIRAE BENEDICT** has sustained the injuries and damages set forth solely by reason of the carelessness, negligence and lack of skill of the defendant, **UNITED STATES OF AMERICA** its agents, servants and/or employees without any negligence or carelessness on the part of plaintiff **DESIRAE BENEDICT**.

18. As a result of the negligence defendant **UNITED STATES OF AMERICA's** its agents, servants and/or employees negligence, plaintiff, **DESIRAE BENEDICT** has suffered and continues to suffer severe personal injuries and injuries, including but not limited to past and future physical pain and suffering and mental anguish; past and future physical disfigurement; past and future permanent physical impairment and permanent disability; past and future loss of earnings and earning capacity; past and future medical care, health care and attendant care expenses; past and future loss of normal life; out of pocket expenses and other pecuniary losses and damages. Such injuries are, in reasonable probability, permanent in nature. Plaintiffs, **DESIRAE BENEDICT and ANTON BENEDICT**, brings this suit to recover all damages available under New York state law, federal law, and equity resulting from the injuries proximately caused by defendant **UNITED STATES OF AMERICA's** negligence.

19. Plaintiff, **ANTON BENEDICT**, claims damages for loss of services in the amount of \$500,000.00.

IX.

MEANING OF "DEFENDANT"

20. In this Complaint, whenever the term "defendant" is used, it means defendant, defendant's officers, agents, servants, employees, and/or representatives. Whenever in this Complaint it is alleged that defendant did any act or thing, it is meant that defendant, defendant's officers, agents, servants, employees, and/or representatives did such act or thing, and that at the time such act or thing was done, it was done with the full authorization and ratification of defendant and was done in the normal and routine course and scope of employment of defendant's officers, agents, servants, employees, and/or representatives. Whenever in this Complaint it is alleged that defendant omitted any act or thing, it is meant that defendant, defendant's officers, agents, servants, employees, and/or representatives omitted such act or thing.

X.

PRAYER

Plaintiffs, **DESIRAE BENEDICT AND ANTON BENEDICT** requests that defendant **UNITED STATES OF AMERICA** appear and answer herein; that upon final trial and hearing, Plaintiffs have judgment against the Defendant, for the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.); for post-judgment interest at the applicable legal rate; for all Court costs incurred in this litigation; and for such other and further relief, at law and in equity, both general and special, to which the plaintiff may show himself.

FIEDLER DEUTSCH, LLP

Attorneys for plaintiffs

By: 

ADAM E. DEUTSCH

81 Main St., Ste. 304

**Dated: White Plains, NY
February 11, 2021**

**White Plains, NY 10601
914-993-0393**

CERTIFICATE OF MERIT

I, ADAM E. DEUTSCH, have reviewed the facts of the case and have consulted with at least one physician licensed to practice medicine in New York and I reasonably believe that the expert is knowledgeable in the relevant issues involved and I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this suit.

Dated: White Plains, NY
February 11, 2021


ADAM E. DEUTSCH